

1905-061 Chancery Causes: Mat Spencer vs. Adm. of Chadwell Brittain
Lee Co.

Flanary

CA-Debt

T-Property

To the Hon. H. A. W. Skeen, Judge of the Circuit Court
for Lee County, Virginia:

Humbly complaining your orator, Mat Spencer, and your oratrix Louisa Spencer, residents of Breathitt County, Kentucky, would respectfully represent and show unto your honor, on behalf of themselves and all others, the contract creditors of Chadwell Brittain, late of Lee County, Virginia, deceased, who shall come in and contribute to the expense of this suit; that on the 30th day of March, 1877 William Spencer for L. C. Bohannon and B. F. Cockrill obtained in Lee County Circuit Court, against one Chadwell Brittain, a judgement for the sum of \$2952.00, with 10% interest per annum thereon from the 8th day of October, 1870 until paid, together with the cost of said judgment, subject to a credit of \$2842.75, as of the 16th day of November, 1874, a copy of which judgment is herewith filed as part hereof marked "A". On the said judgment an execution was issued on the 16th day of April 1877, and placed in the hands of Thos. S. Ely, then Sheriff of said County, for collection, made returnable to June Rules, 1877, and at said Rules was returned with the following written return endorsed thereon. "Not executed, no property found. Thos. S. Ely, S. L. C."; and on the 30th day of April, 1886, another execution was issued on said judgment, and placed in the hands of S. H. Ewing, Deputy Sheriff, for collection, returnable to July Rules, 1886, and on which the following return was endorsed, " Not executed, no property found. S. H. Ewing D.S. for R. D. Flanary, S. L. C. " A certified copy of the execution book showing the issuance of said execution and returns thereon endorsed, is herewith filed as part hereof marked "B".

Your orator and oratrix will further represent and show unto your honor that the said William Spencer, after the rendition of said judgment, purchased from the said B. F. Cockrill his entire interest therein, which interest was assigned and transferred by said

Cockrill to the said William Spencer, and which interest was afterwards, to-wit, on the 22nd day of April, 1904, assigned by said William Spencer to your orator, ~~Mat Spencer~~^{last}, which assignment is herewith filed as part hereof marked, "C"; that the said William Spencer at the time of the rendition of said judgment settled with the said Bohannon, and obtained from him, his interest in said judgment, as is shown by said judgment, which interest was afterwards, to-wit, on the 19th day of April, 1904, by direction of the said William Spencer assigned and transferred by L. C. Bohanan to your oratrix Louisa Spencer. Said assignment is herewith filed as part hereof marked "D". Thus your orator and oratrix became the sole owners of the said judgment, no part of which has ever been paid to the said William Spencer, nor to the said L. C. Bohannon, nor to the said B. F. Cockrill, nor to your said orator and oratrix, or either of them at any time, except the said credit given in said judgment/ and the balance of said judgment, after said credit, is yet justly due and owing to your said orator and oratrix.

The said Chadwell Brittain departed this life in Lee County, Virginia, intestate, on the _____ day of _____, 1893, seized and possessed of a small personal estate, but no real estate, of which your complainants have any knowledge, and on the 27th day of November, 1893, the personal estate of the said Brittain was committed, by an order of the County Court of the said County, to C. E. Flanary, then Sheriff of the said County, for administration, a copy of said order committing said estate to said Flanary is herewith filed as part hereof marked "E"; and the said Flanary as such administrator took charge of said personal estate and proceeded to administer the same, but the entire personal estate, or nearly so, it being small in amount, was nearly consumed by the payment of the taxes, expenses of administration, and perhaps funeral expenses, and a few small debts, leaving in said administrator's hands the sum of \$43.56 only, August 27th, 1902, but no amount was paid by said administrator on the said judgment. A copy of said settlement of

3.

of said administration account by R. L. Pennington, Commissioner, of accounts, is herewith filed as part hereof marked "F". No other personal estate, of which complainants have any knowledge came into the hands of the administrator until on the _____ day of _____, 1905, a claim in favor of the said estate against the Government of the United States, for property and supplies taken

by the United States Army from said Brittain, during the war of 1861-5, and to which claim the said decedent was entitled on and before the return day of

was allowed by the court of claims, and under an appropriation by the Congress of the United States, on the 9th day of March, 1905, the said administrator received from the said government the sum of \$2432.00, on account of the said claim, being the amount due the estate after the payment of the attorneys fees &c. And this fund together with the said \$43.56 is now in the hands of the said administrator, and subject to the payment of the debts of the said decedent, but is not an amount sufficient to pay said indebtedness in full.

In tender consideration whereof, and for as much as your orator and oratrix are remediless in the premises save by the aid of a court of Equity where matters of this nature are properly cognizable and relievable. To this end, therefore, that justice may be done in the premises, your orator and oratrix pray that the said C. E. Flanary, administrator of the said Chadwell Brittain, deceased, may be made party defendant to this bill, and required to answer the same, but not on oath, answer under oath being expressly waived; that an account may be taken by and under the decree of this honorable court of the ~~debts of the~~ said judgment due your orator and oratrix, and of all other debts which were owing by the said testator at the time of his death, and which still remain unpaid, and their priority, and that the said judgment be decreed to be first paid out of the said personal estate before the payment of common contract creditors; that an account may also be taken of said testator's personal estate and ^{that} effects received by said administrator, or should have been received by him in due course of administration, and that the funds thus

and to which claim the said decedent was entitled on and before the return day of
and to which claim the said decedent was entitled on and before the return day of

4.

found to be in his hands or chargable to him, after the expense of administration, be applied first to the payment of the cost of this suit, including an attorney's fee of \$ 57.00, to Orr & Noel, Counsel of Complainants; secondly, to the payment of the said judgment, and the residue, if any, properly applied to the payment of common contract creditors of the said Chadwell Brittain, deceased. And that your orator and oratrix may have such other, further and general relief in the premises as to the court may seem meet, and the circumstances of the case may require. And your orator and oratrix willever pray &c.

Orr & Noel p.q.

C 8-83
 L 18-50
 S 50
 Tax 1-50
 22-83

Mat Spencer et al.
 vs Bill in Chancery.
 C. E. Flannery Solicitor

Filed 2nd April 1905.

H. E. Ewing clerk
 1905 2nd April Rules -
 Bill filed, Sp. ex-
 ecuted, and ans.
 of diff. filed.
 1st May Rules -
 Cause set for
 hearing

May Term 1905 -
 Decree final

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The Seperate demurrer and answer of C.E.Flanary, administrator of the estate of Chadwell Brittain deceased, to a bill exhibited against him in this Honorable Court by Mat Spencer and Louisa Spencer,

Respondent is advised that the plaintiff's bill is not sufficient in law to call upon him to answer in this Honorable Court, and he demurs to the same, and for cause of demurrer assigns the follow grounds, viz:

1. The bill is in the nature of a creditors' bill and fails to allege any indebedness against said estate, except the judgment asserted by the plaintiffs' themselves, which judgment is a legal demand, if demand at all, and the fund out of which it is sought to collect said judgment is legal assets in the hands of the administrator and if applicable to the payment of said judgment, could be reached at law, by scire facias or action at law;

2. The judgment sought to be asserted is alleged by the bill to have been obtained against Chadwell Brittain in his life time, and it has never been revived, against respondent as his administrator, and until revived no suit can be maintained against this respondent, nor does the bill, if it could be treated as an action for revival, pray for any such relief.

And respondent prays judgment of his said demurrer.

Not waiving said demurrer, but relying and insisting thereon, respondent admits that the record shows that on the 30th day of March, 1877, William Spencer for L.C. Bohanan and B.F. ^{Backwell} ~~Harris~~, obtained a judgment in the Circuit Court of Lee County against his decedent for the sum mentioned in said bill with interest at the rate of 10% from the 8th day of October, 1870 until paid, together with the cost of procuring said judgment, subject to a credit of \$2342.75, as of the 16th of November, 1874. Respondent also admits that the records show that the two executions mentioned in the plaintiffs' bill, issued as therein stated and were returned as claimed and at the times therein mentioned. The last of these executions issued on the 13th day of April, 1886, returnable to July

Rules, 1886. But respondent denies that said exceptions
or either of them constitute a lien on said goods. That
Respondent has no knowledge of the purchase of said judgment

by William Spencer from B.F. Cockrell, and he neither admits nor de-
nies the same, but demands full and explicit proof thereof; nor
does he have personal knowledge of the dealings with respect to said
judgment had between the said William Spencer and his son and wife,
he neither admits nor denies the allegations of the bill in respect
thereto but demands that the same shall be properly shown by explicit
and sufficient proof.

It is further true that Chadwell Brittain departed this life
intestate in the year 1893, and that on the 27th day of November,
1893, the personal estate of said Brittain was committed by an or-
der of the County Court ^{to} your respondent for administration. This
fact is fully shown by a copy of the order of said Court filed by
complainants with their bill marked "E", to which exhibit reference
is here made and the same is made a part of this answer. It is
likewise true that very little estate came into the hands of your
respondent, and that the same has been practically consumed by the
payment of taxes, expenses of administration, funeral expenses and
doctor bills.

It is further true that respondent has made a partial settle-
ment of his account by which it is shown that there is still in his
hands, out of the funds so received by him at the time he quali-
fied and took charge thereof, \$43.56; but there is a balance yet
due of ~~some~~ \$20 or \$25 out of this fund, to Dr. A.H. Fulton. It is
further true that in the month of March 1905, there came into re-
spondents hands the sum of \$4864.00 from the Government of the United
States on account of a claim in favor of the said Brittain against
the Government of the United States for property and supplies taken
by the Army of the United States during the Civil War. Of this sum
your respondent paid to the attorneys who prosecuted said claim
one half of the amount recovered, leaving in your respondent's
hands the gross sum of \$2432.00. This sum after the deduction of
proper commissions to your respondent will be either for distribution
among the heirs of said Brittain, or for the payment of his debts,
should any proper debts be presented, but your respondent denies
that the claim of the plaintiffs is any liability against said estate

over he is for ever with out a receipt of said ~~undistributed~~ ^{undistributed} proceeds and not being received in 8 years it is now

to which the fund in his hands is in any way applicable, or that payment out of the same can be demanded.

It is clearly shown from the bill of plaintiffs that said claim here attempted to be asserted against the estate of Chadwell Brittain is barred by the Statute of Limitation. The law expressly requires that all claims against the estate of any person dying after the 1st day of May, 1888, shall be prosecuted within five years next after the appointment and qualification of the decedent's personal representative, and it likewise provides that on a judgment rendered against a decedent in his life time, no execution can be issued, no scire facias or action can be brought against the personal representative of said decedent unless it shall be brought within five years from the qualification of such personal representative, and as before stated, your respondent qualified as the administrator of the said Chadwell Brittain on the 27th day of November, 1893, and this suit not instituted until the ____ day of March 1905, more than eleven years after the qualification of your respondent as administrator as aforesaid. Said judgment never was revived by action or scire facias, and all rights growing out of said judgment and any execution ever issued thereon is now barred by the statute of limitation, the benefits of which your respondent here invokes.

And now having answered said bill as fully as he is advised it is material or necessary to answer the same, your respondent prays that he be hence dismissed, but before concluding respondent deems it necessary to ask your Honor to grant him reasonable attorneys fees out of said funds now in his hands to enable him to present this defence, which he is advised it is his duty under the law to make, even though his defence should be unavailing and the plaintiffs should succeed in applying said funds to the payment of their judgment.

Duncan & Cridlin, P.O.

C. E. Flannery, adms re.
ads { in ltr.

Nat'l Spencer et al

- Answer -

Filed 2nd Apr. R. 1908-

J. C. S. Ewing, clk.

Virginia:

In the Supreme Court of Appeals, held at the Court House thereof in the City of Staunton, on Thursday the 14th day of September, 1908.

Mat Spencer and Louisa Spencer
against

Appellants

C. B. Flanary, Adm'r of Chadwell Brittian, dec'd. Appellee.

Upon an appeal from and supersedeas to a decree of the Circuit Court of Lee County, pronounced on the 18th day of May, 1908.

This cause, which is pending in this Court at its place of session at Wytheville, having been fully heard but not determined at said place of session, this day came here the parties, by counsel, and the Court having maturely considered the transcript of the record of the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record that there is no error in the said decree.

Therefore it is decreed and ordered that the same be affirmed and that the Appellee recover of the Appellants Thirty Dollars damages, and also their costs by them in this behalf expended.

Which is ordered to be entered in the order book here and forth with certified, together with a certified copy of the opinion in the case to the Clerk of this Court at Wytheville, who will enter the order in the order book there and certify it to the said Circuit Court of Lee County.

A copy,

Appellee's costs at
Staunton, \$1.92 Paid.

Teste: Jos. A. Addell,
Clerk

Appellee's costs

A copy,

Teste:

J. M. Kelly, Clerk.

Attorney \$20.00
Clerk 1.87
\$21.87

Teste:

J. M. Kelly, Clerk.

Entered in Chie's
Order Book No 8. Page
86.

Pliff. —
Soft alk 5.68
" 1.5—
" 18.00
" .00
" 1.50
\$ 22.83

Mat Spencer et al - - - - - Plaintiff

vs. In Chancery.

C.E.Flanary, admr. &c. - - - - - Defendant.

This cause came on this day to be heard upon the bill of the plaintiffs and the demurrer and answer of the defendant, joinder in said demurrer and general replication to said answer, and was argued by counsel;

On consideration of which it is adjudged, ordered and decreed that said demurrer be and the same is hereby overruled, and upon mature consideration by the Court of the defence of the statute of limitations set up and invoked in the answer, the Court is of opinion and doth adjudge and decree that the right of the plaintiffs to enforce said judgment is barred by the statute of limitations, more than five years having elapsed since the qualification of C. E. Flanary as administrator of the estate of Chadwell Brittain deceased, and said judgment never having been revived against said administrator either by scire facias or action, on consideration of all of which it is adjudged, ordered and decreed that the bill of the plaintiffs be, and the same is hereby dismissed, and that the defendant recover his costs against the said plaintiffs to be taxed by the Clerk, for which execution may issue.

And the Court being of opinion that the attorneys' fee of the said C.E.Flanary should be borne by and paid out of the fund now in the hands of said administrator, and being asked to fix the amount of the same the Court doth adjudge and determine that \$100.00 will be a reasonable attorneys' fee to be paid by said administrator to Duncan & Cridlin for the services in defending said suit, and when the said administrator pays the same to the said attorneys he will take their receipt for the same which shall constitute a credit to him in his settlement as such administrator.

~~And this cause is stricken from the docket.~~

MEMORANDUM:

The plaintiffs suggesting that they are agrieved by the foregoing decree and have asked for a suspension of the same to give them an opportunity to present their petition to the Supreme Court of Appeals of Virginia, for an appeal, said decree is suspended for 30 days, upon the plaintiffs or some one for them executing bond in the sum of \$50.00 conditioned to pay such damages as may be sustained by such suspension.

And the cause is stricken from the docket

Mat Spencer it is
no. 42 Dene

C. J. E. Flawony Adams

Entered in C.B.
No-8-p-387e.

Enter this dene
H. J. C. S. S. S.

May 18th 1905

Virginia,

At a Circuit Court continued and held for Lee County at the Court-house thereof, on Friday the 30th day of March, 1877.

C. 10.52

A. 2.50

S. 1.50

\$14.52

Wm. Spencer for L. C. Bohannon & B. F. Cockrill Plaintiff:

vs.

: In Debt,

Chadwell Brittain

: Defendant :

This day came again the parties, plaintiff Wm. Spencer and the beneficiary L. C. Bohannon in their own proper person, and the other beneficiary H. B. Cockrill by his attorneys M. B. D. Lane & Wm. H. Burns and the defendant, Brittain by his attorneys Hagan & Pridemore and by consent of all the parties, given by themselves as aforesaid and by their attorneys of those not present, it is adjudged, that the plaintiffs recover of the defendant the sum of \$2952.00 with ten per cent interest per annum thereon from the 8th day of October 1870, until paid, together with the costs herein expended subject to a credit of \$2842.75 as of the 16th day of November 1874.

And it is agreed and understood by and between Wm. Spencer the plaintiff and L. C. Bohannonⁿ and H. B. Cockrill the latter acting by his attorneys aforesaid that the said Wm. Spencer is liable to the said Bohannonⁿ on his assignment for the sum of \$1266.47^{and} his proportions of the costs incurred in prosecuting this suit, and to the said H. B. Cockrill in the sum of \$1802.60 and his proportion of the costs, they the said Bohannonⁿ & Cockrill being unable to make off of the said Brittain said respective sums, and the said Bohannon and Spencer have settled this day the said matter between themselves and the said Cockrill not being present, the matter of payment of the sum due him is deferred; and it is further agreed that the said Spencer is to take control of this Judgment against Brittain for the purpose of collection, and when he shall settle with said Cockrill, is to be, and will be the exclusive beneficiary thereof, but until Spencer satisfies Cockrill, Cockrill is to be the beneficiary of the judgment against Brittain. The parties are hence dismissed, and the cause is stricken from the docket.

A Copy-Teste:

Clerk.

Copied from Order Book No. 4 page 165.

Am. Species. Ref.

Dr. J. M. L. L. L.

Chadwell Britain

Ref.

~~~~~

Copy.

A.

Chen 404



|                               |       |                           |              |                                                 |
|-------------------------------|-------|---------------------------|--------------|-------------------------------------------------|
| 1877<br>Apr. 16 <sup>th</sup> | L. B. | Wm. Spencer for L. C.     | Thos. S. Ely | Judgment for \$2952.00, with in-                |
| Apr. 30, 1884                 |       | Bohannon & B. F. Cockrell | S. H. Ewing  | terest at the rate of ten per cent              |
|                               |       | vs.                       |              | per annum from October 8 <sup>th</sup>          |
|                               |       | Chadwell Brittain         |              | 1870, till paid & the costs.                    |
|                               |       |                           |              | C. 10.52 A. 2.50 S. 1.50. Subject to a          |
|                               |       |                           |              | Credit of \$2842.75 as of Nov. 16 <sup>th</sup> |
|                               |       |                           |              | 1874 + C. 78                                    |



|        |                                                                           |                 |
|--------|---------------------------------------------------------------------------|-----------------|
| Hi Ha  | Not executed no property found. Thos J. Eely S.D.C.                       | June Rules 1877 |
| Hi Ha. | Not-executed. no property found. S.H. Ewing D.S. for R.D. Handy<br>S.D.C. | July Rules 1886 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |
|        |                                                                           |                 |

A-Copy Teste: S.H. Ewing Clerk.  
 By M.D. Handy D.C.  
 X  
 Copied from Execution Book page 97.



W<sup>m</sup> Spencer Love.  
VS. } Abstract from  
      } Execution Book.  
Chadwell Brittain

B

Clerk 40p



Where-as from the year of ~~1860~~<sup>1860</sup> to ~~1865~~<sup>1865</sup> Chadwell Britton of Lee County  
Va. became indebted to me in about the sum of five thousand dollars  
(\$ 5000.) And for and in consideration of my indebtedness to Henry Cockrill  
and L. S. Schannan. I assigned this indebtedness to them, and they brought  
suit in the Lee County Court of the State of Va., for the recovery of this  
indebtedness, and recovered a judgement. But during the pendency of this  
action at the special instance and request of said Cockrill and Schannan,  
I had paid back or nearly so the entire amount of the Britton debt, and possibly  
finished paying it after the judgement had been rendered which was about  
the year of 1877. Britton died and his estate was found to be almost  
insolvent, and up to this time I have been unable to collect any part  
of Brittons indebtedness to me except my proratable share of a small tract  
of land sold by reason of said judgement and purchased by, Smith Ball  
and Max Weaver. Now therefore in view of these facts, and to satisfy  
my indebtedness to Mat Spencer in the sum of twenty five hundred dollars  
(\$2500.). I here-by sell assign and transfer my entire rights, title and  
interest in, to, and by reason of said judgement as a fore-said. Which  
is in full satisfaction of my said indebtedness to Mat Spencer as aforesaid.  
Granting him the privilege of using my name for the purpose of the  
collection of said judgement without cost or expense to me, if it should  
be necessary to do so.

Given under my hand April the 22<sup>nd</sup> 1904.

*William Spencer*

*Subscribed and sworn to before me by  
Wm Spencer this April 22 day 1904*

*J. S. Tucker Clerk B.C.  
By J. B. Hudson*



W<sup>m</sup> Spencer

To { Assignment  
of Judgment,

Mat Spencer.

C



I, L. C. Bohannon, hereby state, that in all the matters and transactions between myself, Henry Cockrill and William Spencer was settled between us as I now remember in about the year 1878, Edward Maroon of Breathitt County Ky, having made said settlement and said settlements and receipts are now in the possession of William Spencer, which settlements and receipts, have just been presented to me in the law office of Wm. A. A. Cope in the town of Jackson Breathitt County Ky., Said Spencer having fully paid Henry Cockrill and I the entire indebtedness which was in litigation in the Lee County Circuit Court of the State of Virginia, in one case as I now remember styled, William Spencer for the benefit of Henry Cockrill and I vs Chadwell Brittain. In view of these facts and said payments I hereby appoint the Circuit Court Clerk of Lee County & State of Virginia, my true and lawful Attorney-in-fact, to assign and transfer and indorse on the records in his said office all my rights, interests and privileges, under and by reason of any judgment that has heretofore been rendered in said case to Louisa Spencer wife of William Spencer and daughter of Chadwell Brittain. Without any recourse on me whatever and when so made to her is to have the same effect and to be as binding on me as if I was present in person making said transfer personally.

Given under my hand this the 19th day of April 1904.

Witness

*E. P. Landman*

*L. C. Bohannon*

State of Kentucky  
County of Breathitt

~~Subscribed and sworn to before me by L. C. Bohannon, this the 19th day of April 1904.~~

State of Kentucky  
County of Breathitt      set

I, S. S. Taulbee, Clerk of the Breathitt County Court, certify that the foregoing instrument in writing was produced to me in my office by L. C. Bohannon and by him acknowledged before me ~~by~~ to be his act and deed.

Witness my hand, this April, 19, 1904.

*S. S. Taulbee* ----- Clerk

By *E. P. Landman* ----- D. C.



L. C. Bohannon -

To/Power of atty.

John Lee Curran et al.  
State of Va

---

D.



Virginia,

At a County Court continued and held for Lee County at the Court-house thereof on Monday November 27th, 1893.

Chadwell Britton of this County having died more than three months ago, and no person having applied for administration of his goods & Chattels, it is ordered that the said estate be committed to C. E. Flanary Sheriff of this County, for Administration.

A Copy-Teste:

*J. C. Leving* Clerk.

*By M. E. Flanary D.C.*



B. E. Flanary Secy.  
of Cheikell Brittain

Secy.  
Copy of Order of  
Appointment.

---

C



Commissioner's Office,

Sept 26,

1902

To the County Court of Lee County:

Your Commissioner reports to the Court, that on the 27<sup>th</sup> day of Aug  
1902, C. E. Flourey Adm'r of the Est. of  
Charles B. Britton Decd.

exhibited before your commissioner a statement of all the money which he, the said  
Adm'r -, had received or become chargeable with or disbursed

within Jan'y 1, 1895 & the 27<sup>th</sup> day of Aug  
1902, together with the vouchers for such disbursements; that the commissioner embraced the  
said Adm'r in the list of fiduciaries, whose accounts were before

him for settlement, which was posted at the front door of the court-house of said county, on the first  
day Sept. Court last, and on the date of this report (ten days having since  
elapsed) has made up and completed the foregoing account of the said

Adm'r.

, and on  
the 27<sup>th</sup> day of Aug 1902, finds a balance of \$ 43.56 due  
the said Estate

of which sum \$ 21.00 is interest. The account is supported by satisfactory vouchers,  
and is herewith returned.

Your commissioner further reports to the Court, that said Est was  
at Committed to said is in a sufficient penalty and with sufficient sureties,  
and is such as the law requires. Flourey as Sheriff.

Given under my hand, as Commissioner of Accounts of the said court, on the day and year  
first aforesaid.

Robert H. Cunningham



Virginia,

At a county court begun and held for Lee County at the court-house thereof on Monday the 17th, day of November, 1902.

C. E. Flanary, Administrator of the Estate of Chadwell Brittain decd. this day produced to the court a settlement and report of his administration account made by R. L. Pennington Commissioner of accounts for this county; and it appearing to the court that the said settlement and report have been filed in the Clerk's Office of this court the time required by law, and that no exceptions have been filed thereto, and being seen and inspected by the court, the same is confirmed and approved, and ordered to be recorded.

A Copy, Teste; *B. L. Pennington* ----- Clerk.

Form No. 405.

*C. E. Flanary*

with *Admrs'* }  
ACCOUNT.

*Chadwell Brittain*

*B. L.*

Filed the 15<sup>th</sup> day of *October*

1902

*Recorded in Set of  
Ind - Page 212*



1895

L. E. Flourney Adviser-

In Act with the East Carolina Bottom Dy.

64

Jan

1

To Auth of Sale Bill due  
By " of note over A. J. Sutton  
Recommended by John Bottom  
one of the hums. which  
turns out in column  
Costs included

18759

5150

" Bal- an Dock Sutton's  
note recommended by John  
Bottom & which turns  
out in column, Cost included

450

1897  
Mar

2

" " p of tax 1896-

1

135

1898  
Apr

1

" " " " 1897

2

118

1899  
Sept

14

" " " " 1898

3

145

1900  
May

17

" " " " 1899

4

121

1901  
Mar

4

" " " " 1900

5

118

1901  
Apr

24

" " " " 1901

6

102

1895  
Oct

30

" " " M. S. Ball, Apr-

7

100

"

"

" " " H. R. Bates "

8

100

1894  
Aug

22

" " " W. E. Hymus. "

9

100

1894  
Jan

21

" " " S. V. F. Richmond

10

225

1897  
Feb

2

" " " B. C. Campbell

11

1308

1897  
Mar

1

" " " Davis Back on note

12

560

1895  
Nov

5

" " " A. H. Fulton "

13

2000

1894  
Oct

23

" " " H. S. Robinson-

14

475

1896  
Dec

1

" " " A. M. Clancy

15

600

" " " H. J. Morgan for Rose

16

1802

" " " R. P. Pumphrey Corner-

17

300

" " " B. M. Morgan, Chesapeake.

18

185

" " " 10% Cor- on Jan of 1895-

19

1409

To Act on Bal owing to date

20

145

By Bal. due East to Square-

21

56

1902

Aug

27

2100

20954

4356



C. E. Henry Allen  
Chocoma Britton  
Jill & Aug 29, 1902



SOUTHEASTERN DEPARTMENT.

# FIREMANS FUND

INSURANCE COMPANY

OF SAN FRANCISCO, CAL.

EDGAR S. WILSON, MANAGER. MACON, GA.

3  
7  

---

21.00



Aug. 27.

1902

RECEIVED

of C. E. F. Loney Adm -  
Three

Dollar.

Making settlement as Adm. of the  
estate of Chas. B. Britton

\$3.00

Robt L. Pennington Am  
Hds



Mr. C. E. Flanary Adm'r. Chad Brittain, Jonesville District No. 3.

To E. S. FLANARY, Treasurer Lee County, Virginia, Dr.

| No. P             | No. L  | 1901  | State Tax 30<br>cts. on \$100 | St'e sch'l tax<br>10 cts on \$100 | Co. Levy 25<br>cts. on \$100 | Road Tax 25<br>cts. on \$100 | Co. sch'l tax<br>10 cts on \$100 | Dis Schl tax<br>10 cts on \$100 | TOTAL AMT<br>OF TAXES. |
|-------------------|--------|-------|-------------------------------|-----------------------------------|------------------------------|------------------------------|----------------------------------|---------------------------------|------------------------|
|                   |        | Val.  | \$1 00                        |                                   | 50                           |                              |                                  |                                 | \$1 50                 |
| Head Tax          |        |       |                               |                                   |                              |                              |                                  |                                 |                        |
| Per. Prop.        |        | 14.64 | 38                            | 09                                | 23                           | 23                           | 89                               | 89                              | 102                    |
| No.               | Tracts |       |                               |                                   |                              |                              |                                  |                                 |                        |
|                   | Acres  |       |                               |                                   |                              |                              |                                  |                                 |                        |
| Lots              |        |       |                               |                                   |                              |                              |                                  |                                 |                        |
| TOTAL             |        |       |                               |                                   |                              |                              |                                  |                                 | 102                    |
| 5 per cent pen'ty |        |       |                               |                                   |                              |                              |                                  |                                 |                        |

Received Payment, W. E. Flanary, D. Treas.



Mr. G. E. Flanary, Chad Britt, Jonesville District. No. 3.

To E. S. FLANARY, Treasurer Lee County, Virginia, Dr.

| No. P             | No. L | 1900     | State Tax 30  | St'e sch'l tax  | Co. Levy 35   | Road Tax 25   | Co. sch'l tax   | Dis Schl tax    | TOTAL AMT. |
|-------------------|-------|----------|---------------|-----------------|---------------|---------------|-----------------|-----------------|------------|
|                   |       | Val.     | cts. on \$100 | 10 cts on \$100 | cts. on \$100 | cts. on \$100 | 10 cts on \$100 | 10 cts on \$100 | OF TAXES.  |
| Head Tax          |       | <u>✓</u> | \$1.00        |                 | 50            |               |                 |                 | \$1.50     |
| Per. Prop.        |       | 94       | 28            | 9               | 35            | 24            | 9               | 2               | 1 12       |
| No. Tracts        |       |          |               |                 |               |               |                 |                 |            |
| Acres             |       |          |               |                 |               |               |                 |                 |            |
| Lots              |       |          |               |                 |               |               |                 |                 |            |
| TOTAL             |       |          |               |                 |               |               |                 |                 | 1 12       |
| 5 per cent pen'ty |       |          |               |                 |               |               |                 |                 | 6          |
|                   |       |          |               |                 |               |               |                 |                 | 1 18       |

Mar 4 1901  
Received Payment: W E Myers, D. Treas.



Mr. *C. E. Flanary* Adm'r. *for Chadwell Brittain*  
 Jonesville District. No. 3.  
 To E. S. FLANARY, Treasurer Lee County, Virginia, Dr.

| No. P             | No. L  | 1899       | State Tax 30  | St's sch'l tax  | Co. Levy 25   | Road Tax 30   | Co. sch'l tax   | Dis Sch'l tax   | TOTAL AMT.    |
|-------------------|--------|------------|---------------|-----------------|---------------|---------------|-----------------|-----------------|---------------|
|                   |        | Val.       | cts. on \$100 | 10 cts on \$100 | cts. on \$100 | cts. on \$100 | 10 cts on \$100 | 10 cts on \$100 | OF TAXES.     |
| Head Tax          |        | <i>0</i>   | <i>\$1.00</i> |                 | <i>50</i>     |               |                 |                 | <i>\$1.50</i> |
| Per. Prop.        |        | <i>100</i> | <i>30</i>     | <i>10</i>       | <i>25</i>     | <i>30</i>     | <i>25</i>       | <i>10</i>       | <i>115</i>    |
| No.               | Traets |            |               |                 |               |               |                 |                 |               |
|                   | Acres  |            |               |                 |               |               |                 |                 |               |
| Lots              |        |            |               |                 |               |               |                 |                 |               |
| TOTAL             |        |            |               |                 |               |               |                 |                 | <i>1 15</i>   |
| 5 per cent pen'ty |        |            |               |                 |               |               |                 |                 | <i>8</i>      |
|                   |        |            |               |                 |               |               |                 |                 | <i>1 21</i>   |

*May 17 1900*  
 Received Payment *W. E. H. [Signature]* D. Treasurer.



Mr. *C E Flanery* Admn for *Chadwell Butaw*  
 White Shoals District. No. 2.  
 To W. E. WYNN, Treasurer Lee County, Virginia, Dr.

| No. Pgs           | No. L      | 189 | State Tax 30  | St's sch'tax    | Co Levy 25    | Road Tax 25   | Co. sch'tax     | Dis sch'tax     | TOTAL AMT.  |
|-------------------|------------|-----|---------------|-----------------|---------------|---------------|-----------------|-----------------|-------------|
|                   |            |     | cts. on \$100 | 10 cts on \$100 | cts. on \$100 | cts. on \$100 | 10 cts on \$100 | 10 cts on \$100 | OF TAXES.   |
| Head Tax          |            |     | \$1 00        |                 | 50            |               |                 |                 | \$1 50      |
| Per. Prop.        | <i>120</i> |     | <i>36</i>     | <i>12</i>       | <i>30</i>     | <i>50</i>     | <i>12</i>       | <i>12</i>       | <i>1 38</i> |
| No. Tracts        |            |     |               |                 |               |               |                 |                 |             |
| Acres             |            |     |               |                 |               |               |                 |                 |             |
| Lots              |            |     |               |                 |               |               |                 |                 |             |
| TOTAL             |            |     |               |                 |               |               |                 |                 | <i>1 38</i> |
| 5 per cent pen'ty |            |     |               |                 |               |               |                 |                 | <i>7</i>    |
|                   |            |     |               |                 |               |               |                 |                 | <i>1 45</i> |

*Sept 19 1899*  
 Received Payment *W E Wynn* Treasurer.



Mr. *C E Flannery* *adms of Chadwell Bitter*  
 Jonesville District, No. 3  
 To W. E. WYNN, Treasurer Lee County, Virginia, Dr.

| No. <i>9</i>      | No. <i>27</i> 1997 | State Tax 30<br>cts. on \$100 | St'e sch'l tax<br>10 cts on \$100 | Co. Levy 30<br>cts. on \$100 | Road Tax 20<br>cts. on \$100 | Co. sch'l tax<br>10 cts on \$100 | Dis Schl tax<br>10 cts on \$100 | TOTAL AMT<br>OF TAXES. |
|-------------------|--------------------|-------------------------------|-----------------------------------|------------------------------|------------------------------|----------------------------------|---------------------------------|------------------------|
|                   | Val.               |                               |                                   |                              |                              |                                  |                                 |                        |
| Head Tax          |                    | \$1.00                        |                                   | 50                           |                              |                                  |                                 | <del>\$1.50</del>      |
| Per. Prop.        | <i>102</i>         | <i>31</i>                     | <i>10</i>                         | <i>31</i>                    | <i>20</i>                    | <i>10</i>                        | <i>10</i>                       | <i>1 12</i>            |
| No. Tracts        |                    |                               |                                   |                              |                              |                                  |                                 |                        |
| Acres             |                    |                               |                                   |                              |                              |                                  |                                 |                        |
| Lots              |                    |                               |                                   |                              |                              |                                  |                                 |                        |
| TOTAL             |                    |                               |                                   |                              |                              |                                  |                                 | <i>1 12</i>            |
| 5 per cent pen'ty |                    |                               |                                   |                              |                              |                                  |                                 | <i>6</i>               |
|                   |                    |                               |                                   |                              |                              |                                  |                                 | <i>1 18</i>            |

*Dec 1 1898*  
 Received Payment *W E Wynn* Treasurer.

C. Britton



Mr. *C. E. Flanery* *Adam* *Shadwell Britton* *Be*  
 White Shoals District. No. 2

To W. E. WYNN, Treasurer Lee County, Virginia, Dr.

| No. P             | No. L | 1896          | State Tax 30      | Sch'l tax       | Co. Levy 40    | Road Tax 20   | Co. sch'l tax   | Dis Schl tax    | TOTAL AMT.        |
|-------------------|-------|---------------|-------------------|-----------------|----------------|---------------|-----------------|-----------------|-------------------|
|                   |       |               | cts. on \$100     | 10 cts on \$100 | cts. on \$100  | cts. on \$100 | 10 cts on \$100 | 10 cts on \$100 | OF TAXES.         |
| Head Tax          |       | <i>Val.</i>   | <del>\$1.00</del> |                 | <del>.50</del> |               |                 |                 | <del>\$1.50</del> |
| Per. Prop.        |       | <i>108.54</i> | <i>82</i>         | <i>11</i>       | <i>45</i>      | <i>22</i>     | <i>11</i>       | <i>11</i>       | <i>1.29</i>       |
| No. Tracts        |       |               |                   |                 |                |               |                 |                 |                   |
| Acres             |       |               |                   |                 |                |               |                 |                 |                   |
| Lots              |       |               |                   |                 |                |               |                 |                 |                   |
| TOTAL             |       |               |                   |                 |                |               |                 |                 | <i>1.29</i>       |
| 5 per cent pen'ty |       |               |                   |                 |                |               |                 |                 | <i>4</i>          |
|                   |       |               |                   |                 |                |               |                 |                 | <i>1.33</i>       |

*Mar 2 1897*  
 Received Payment *W. E. Wynn* Treasurer.

PRESENTED BY

LIVE STOCK

189

CINCINNATI UNION

DATE

No.

KIND

NAME

Received of J. P.  
Hulane for one lot  
of 200 lbs. of  
Chickens, Dressed  
at 10¢  
per lb.  
Total \$20.00  
J. P. Hulane  
22 1901



RABENSTEIN, HARRIS & CONNER,  
COMMISSION SALESMEN,

STOCK YARDS

PURCHASE

SALES

WEIGHT

PRICE

AMOUNT

AMOUNT

phosphate iron  
quinine  
strychnine

3 27

Chadock Briston

Dr

and Mary Briston

To B. C. Campbell Sept 1-9. 1890

To sawing 3045 ft <sup>of lumber</sup> at 40¢  
per hundred \$12.18

To 285 ft of lumber at 35¢  
per hundred

\$1.90  
\$13.08

This day B. C. Campbell  
& James Spurr personally  
appeared before me and  
made oath that the above  
account is just and remains  
unpaid. This Jan. the 25th  
1895.

M. C. Brooks.  
J. P.



Receipt of C. E. Harvey  
Admr. of Chadwell  
Britian, estate the full  
amount <sup>of</sup> within acct  
since <sup>the</sup> 5/1895-  
B C Campbell

Oct The 30. 1885  
Received of - C. E. Hanna  
owner of the Estate of  
C. E. Hanna - written to me  
dollar as price of the  
personal property of the said  
Hanna

W. B. Hall

Oct The 30. 1885 -  
Received of - C. E. Hanna  
owner of the Estate of C. E. Hanna  
written to me one dollar as  
price of the personal  
property of the said Hanna

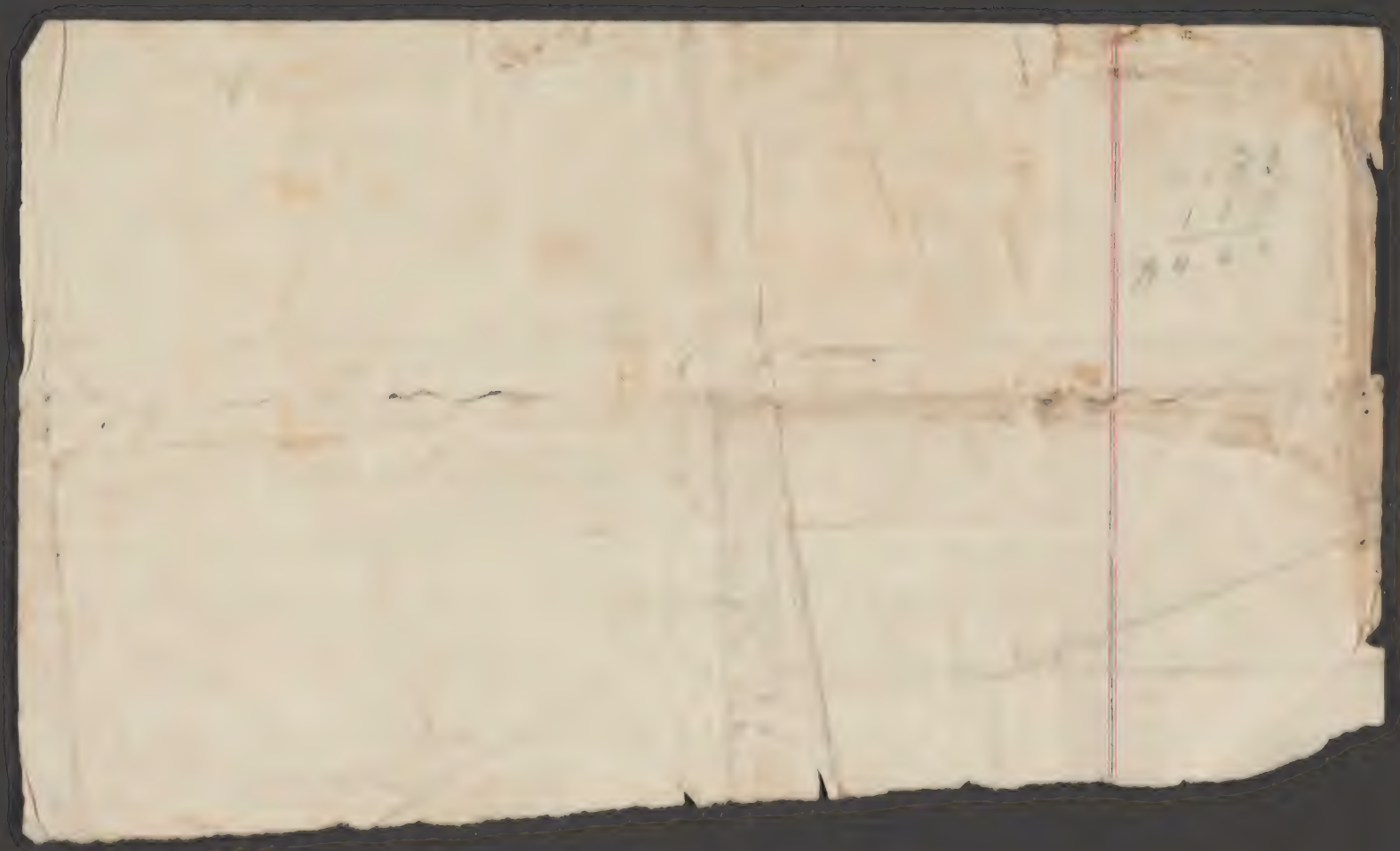
W R Boles



|          |                                                               |                |
|----------|---------------------------------------------------------------|----------------|
| 1893     | Co. E. H. Canary claim Estate of Chad Brattian & Dr           |                |
| Nov 2    | Ord of appointment appraisers &c                              | .50            |
| 1894     |                                                               |                |
| March 15 | Lo recording said lease &c                                    | .50            |
| 1897     |                                                               |                |
| March 29 | " docketing Judg vs G.W. Sutton et al                         | .25            |
| May 13   | <del>Lo copying and of G.W. Sutton vs G.W. Sutton et al</del> | <del>.75</del> |
| " "      | " " Judg vs G.W. Sutton et al                                 | .25            |
|          |                                                               | <u>2.25</u>    |

Received payment in full  
 This Aug 27<sup>th</sup> 1899.

M. D. Richmond  
 per S. V. H. Richmond





Received of C. E. Flannery Adm<sup>r</sup> of the  
Estate of Chadwell Brittain deceased  
check for Twenty (\$20<sup>00</sup>) dollars an  
note in my hands for collection & retained  
by the said Chadwell Brittain in  
his lifetime to A. H. Hutton This the  
1<sup>st</sup> day of March 1897.

C. E. Dunsen Atty.  
for A. H. Hutton

13



\$4.50

One day after date.

I promise to pay to  
R F Burk \$4.50 four  
dollars and fifty cents  
for Value Received and  
I hereby waive as to  
this debt all the privileges  
I may be entitled to  
under the Homestead  
Law given under  
my hand and Seal  
this Dec the 12<sup>th</sup>  
1897

Chauncey Burr Beale  
attest Jas G Lechardwell

Received of C.E. Flanary admr.  
of the Estate of Chadwell Britton  
Deceased. Five Dollars & Sixty  
One Cents for David Burk this  
Feb 2 - 1895. J.M. Weston Deputy  
Shiff



The Chadwell & Mary  
Brittain Estate  
To W. S. Robinson 1892.  
Dr.

To Berrial Shroud  
Four dollars and seven-  
ty five cents. \$4.75

W. S. Robinson

Subscribed and sworn  
to before me this 5th  
day of Nov: 1895.

M. C. Brooks J. P.

Nov the 6. 1851 -  
Received of C. E. Fildes  
agent of the estate of Charlotte  
Britton of four dollars and  
cents for  
W. S. Robinson my  
uncle Britton

(Witnessed by)



No. 3

Jonesville, Va.

Oct The 23

1899



# Powell's Valley Bank

OF JONESVILLE, VA.

Pay to the order of H. M. Caldwell

six dollars part payment on account against Dollars.

\$ 6.00

C. E. F. No. 3

A M Cloud

L M Boring

Cover, Little Ho.

12



Judge [unclear] [unclear]

to A. M. Cloud for

medical Treatment

1802

A. M. Cloud to

Sworn to before me by A. M. Cloud  
May 1895

M. C. Brooks J. D.

A. M. Allen  
deponent

This day J. S. Snavely personally  
appeared before me and made  
oath to the truth of the within ac-  
count and medical treatment.

This Jan. 15<sup>th</sup> 1896.

M. C. Brooks, D.



HENRY J. MORGAN, President.

C. E. COUK, Cashier.

## Powell's Valley Bank.

Henry J. Morgan  
vs  
A M Land

Jonesville, Va., \_\_\_\_\_ 189

Recd of C E Hensley Admt of Charleswell Bratton the sum of Eighteen  
dollars and two cents in full of a judgment rendered against him as a  
Guarantiser in the case of H J Morgan vs A M Land which was rendered  
against him as account of said Bratton's estate indebtedness to said Land

Henry J. Morgan  
Decr 1896

16



BRIEF OF APPELLEE.

MAT SPENCER ET AL - - - - - APPELLANTS.

Vs.

In Chancery.

C. E. FLANARY, ADMR. - - - - - APPELLEE.

The questions involved in this case are purely questions of law and are only two in number.

The first involves the sufficiency of the Bill and was raised by the defendant. The second is the question of the statute of limitations presented by the answer. The Court could very properly have sustained either one of these defences and have dismissed the plaintiff's Bill; it, however, based its decision and decree upon the defence of the statute of limitations presented by the answer, and to a consideration of this defence we will first, and principally, devote our attention.

Statute of Limitations.

The judgment sought to be collected by this Bill was rendered on the 30th day of March, 1877 against Maxwell Brittain, who was then living. The said Brittain continued to live until some time in the year 1893, when he died intestate and on the 27th day of November, 1893, his estate was committed to C. E. Flanary for administration. Said administrator possessed himself of the visible personal estate of said decedent, and prosecuted a claim against the Government of the United States for property taken by the United States Army during the war between the States, the prosecution of which claim had been begun by Mr. Brittain in his life-time. The prosecution of this claim only terminated successfully some time in March, 1905, and this suit was instituted some time in March 1905 and very shortly after the money had been paid to the administrator, on said claim, by the Government.

No revival of this judgment, either by writ of *facias* or action was ever had against said administrator.

As above stated the defence interposed and invoked by the administrator to this suit is the statute of limitations. This is a defence which the administrator is compelled, by law, to make.

There are two sections of the Code which bear upon and which provide periods of limitation of actions against personal representa-



tives. The first is in Section 2920 of the Code. This is the general statute of limitations of personal actions, and after enumerating the several periods after the expiration of which a debt is outlawed, the section closes as follows:

"Provided, that the right of action, against the estate of any person not after dying, or any such award or contract, which shall have accrued at the time of his death, or the right to prove any such claim against his estate in any suit or proceeding shall not in any case continue longer than five years from the qualification of his personal representative, or if the right of action shall not have accrued at the time of the decedent's death, it shall not continue longer than five years after the same shall have so accrued."

This statute is too plain to need comment or to necessitate a citation of authorities, but if citation of authorities is necessary, it would be all sufficient to refer to the very recent case decided by this Court of Robertson v. Hill 101 Va. 739.

This statute, although plain and explicit in its terms is not the one directly applicable to the question involved in this case, and is only referred to for the purpose of showing the great care which our legislature has deemed necessary to take for the protection of our men's estates and the safe-guard which it has thrown around them.

The law governing and directly applicable questions of the kind now presented is, as we conceive Section 2577 of the Code, which is as follows:

"On a judgment execution may be issued within a year, and a scire facias or an action may be brought within ten years after the date of the judgment; and where execution issued within the year, other executions may be issued, or a scire facias or an action may be brought within ten years from the return day of an execution on which there is no return by an officer, or within twenty years from the return day of an execution on which there is such return except that where the scire facias or action is against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative \* \* \* \* Any return by an officer on an execution showing that the same has not been satisfied, shall be a sufficient return within the meaning of this section."

This section of our Code is like Section 2920 above quoted, so plain, so specific and so unequivocal in its meaning that comment upon it would seem to be useless, especially providing, as it does, that where the scire facias or action on a judgment is against the personal representative of a decedent that action must be brought within five years from the qualification of the personal representative. After the death of said decedent, a scire facias or action against a personal representative is necessary to revive the judgment



before any further action can be taken upon it. No execution can issue after the death of the decedent and qualification of his personal representative until a revival has been had.

Plain as this statute is, it has had judicial determination in Virginia. In May 1825 this Court decided that "A judgment obtained against a debtor in his life time and not revived against his personal representative after his death, within five years from the date of his qualification, is barred by the statute of limitations"

See Peyton's Adm. vs. Carr's Exor. 1 Rand. 455.

The judgment here sought to be collected has never yet been revived against Chadwell Brittain's administrator although more than twelve years has elapsed since his qualification, and if this suit could be treated as an effort to revive said judgment it cannot be done because not done within five years from the qualification of said administrator. This Bill in Chancery has no more vitality and can accomplish no greater purpose than could a scire facias or an action.

But it is claimed that by virtue of section 3601 of the Code that a lien was created upon the debt, if debt it was, of Chadwell Brittain against the Government of the United States, for the tort committed by its officers in taking his property during the late war. Section 3601 reads as follows:

"Every writ of fi fa shall, in addition to the lien it has under section 3587 on what is capable of being levied on under that section, be a lien, from the time it is delivered to the Sheriff or other officer to be executed, on all the personal property of or to which the judgment debtor is or may afterwards be indebted to the creditor, or his estate, or his heirs, or his assigns, and which is not capable of being levied on under said section 3587."

There is a little question that the execution issued on the day of \_\_\_\_\_, 1866, on the judgment obtained against Chadwell Brittain on the 30th day of March, 1877, created a lien on the debt, if debt it was, against the United States Government in favor of Chadwell Brittain, but that lien, like all other liens, was capable of being lost, and in this instance was lost by reason of the failure to revive said judgment against the administrator of Chadwell Brittain within five years from his qualification. Section 3602, to our minds expressly settles that question. That section reads as follows:

"The lien acquired under the preceding section (Sec. 3601) shall cease whenever the right of the judgment creditor to enforce



the judgment by execution, scire facias, or action ceases; or is suspended by a forth-coming bond being given and forfeited, by supersedeas or by other legal process."

The right to enforce the judgment by execution ceased at the death of Chadwell Brittain and the qualification of his personal representative; the right of scire facias or action likewise ceased at the end of five years after the qualification of said administrator; and as above stated the lien of the execution ceased whenever the right of scire facias or action ceased.

The plaintiff in his Petition which he treats as a brief, refers to *Puryear v. Taylor* 12 Grat. 401; *Evans v. Greenow* 15 Grat 153; *Travillion's Exor. v. Guerrants Exors.* 31 Grat. 525, and several other cases, none of which, as we conceive either modify or change in any way the plain rule of the statute and in fact throw little or no light upon the question here involved. All of these cases deal with conflicting liens, or the question of priority of liens and none of them pass upon or determine the question of limitation as affecting the lien of the execution.

On Demurrer.

Two grounds of demurrer were presented by the defendant to said Bill, which were overruled by the Court, and which action the Appellee assigns as grounds for cross appeal. Said grounds are as follows

FIRST; Said bill is in the nature of a creditors Bill, and fails to allege any indebtedness against said estate, except the judgment asserted by the plaintiffs themselves, which judgment is a legal demand, if demand at all, and the fund out of which it is sought to collect said judgment is legal assets in the hands of the administrator, and if applicable to the payment of said judgment, could be reached at law by scire facias or action.

It seems to us that this ground of demurrer is well taken. Certainly the judgment asserted is a purely legal demand, growing out of a legal obligation. The fund in the hand of said administrator is legal and not equitable assets, and if it is subject to or can be subject to the payment of the judgment alleged in the bill the interposition of a Court of equity is wholly unnecessary. The fund can be reached as easily and as expeditiously at law, by scire facias or action of debt as by bill in chancery.

The principle is well settled in Virginia that suits in chancery are only maintainable or permissible where the law, for any reason, is powerless to afford adequate relief.



Second; The judgment sought to be asserted, is alleged by the bill to have been obtained against Chadwell Brittain in his life-time and it has never been revived against respondent as his administrator, and until revived no suit can be maintained against this respondent, nor does the bill, if it could be treated as an action for revival, pray for any such relief.

The law is well settled in Virginia, as we think, that judgments against a decedent in his life-time must be revived against his administrator or executor, after his death, before anything can be done to compel their payment out of legal assets.

Mr. Tucker in his able Commentaries Vol. 2, page 240 says:

"No execution can ever issue for against any person who is not a party to the original judgment, or made so by some proceedings subsequent to it \* \* \* \* the law rigorous in requiring that all proceedings should harmonize with each other, and that every record, should upon its face, appear consistent with itself. \* \* \* \* Where there is but one plaintiff, or one defendant, and he dies the mere suggestion will not do, there must be a scire facias to revive for against the deceased."

There is, however a line of cases, of which, Taylor's admr. et v. Spindle 2 Grat. 44 is the leading one which properly hold that while the object of the bill in chancery is to enforce the lien of the judgment against real estate, revival by scire facias or action is not necessary. This is based upon the ground that the lien has already attached to the land and that the relief sought is the enforcement of that lien.

As in reverting to the Statute of Limitations. If there was ever a case in which it could be applied, this is one. A judgment bearing ten per cent interest that has thereby doubled itself several times, and which has lain without any attempt to collect it for nearly 20 years, ought to have little standing in any Court, and especially when it is brought against the estate of a dead man. The wisdom of requiring all debts, whether judgments or otherwise to be prosecuted to a conclusion within five years after the qualification of a personal representative, is so manifest that too much praise cannot be bestowed upon such legislation. Otherwise estates would never be closed up, and personal representatives would never be relieved of responsibility.

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The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*C. E. Flanary, Administrator of Chadwell Brittain, deceased.*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *3rd* Monday in *April*, 190*5*, to answer a bill in chancery exhibited against *him*

*in our said Court by Mat Spencer and Louisa Spencer*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *3rd* day of *April*, 190*5*, and *29th* year of the Commonwealth.

A Copy, Teste:

*H. C. T. Ewing*, Clerk.

\_\_\_\_\_, Clerk.



Met Green et al

VS

}

SUBPENA  
IN  
CHANCERY.

C. E. Flannery Adm'r, &c.

Orin A. Norb

p. q

To 2nd April Rules.

Lee Circuit Court.  
1905

Executed April 5<sup>th</sup> 1905 by  
delivering a true copy of the within  
Subp in Chancery to Lee -  
Flannery adm'r of - Chadwick Bitt  
or, J. W. Grubb D.S.  
for Rm Bell  
S-L-C.